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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

KAREN MARIE HOLZWORTH,

Defendant and Appellant.

A145165

(Sonoma County
Super. Ct. No. SCR-627215)

Santa Rosa Junior College Police Officer Jeffrey Holzworth was arrested after it became apparent he was stealing money from parking meters and permit machines on the Santa Rosa Junior College campus. He was charged with felony grand theft by embezzlement and 11 counts of felony receiving and concealing stolen property.¹ His wife, defendant Karen Holzworth,² was charged as an accessory to his grand theft and with two counts of misdemeanor receiving stolen property. A jury found her guilty on all three counts. She appeals, contending her convictions were unsupported by substantial evidence. We disagree, and we affirm.

PROCEDURAL BACKGROUND

A three-count first amended information alleged that between January 1, 2005 and November 24, 2012, defendant was an accessory to the grand theft by embezzlement

¹ He pleaded guilty to all 12 counts and was sentenced to four years in state prison. We affirmed his conviction (*People v. Holzworth* (Mar. 24, 2016, A142440) [nonpub. opn.]) and the trial court's order denying his petition for resentencing under Proposition 47. (*People v. Holzworth* (Mar. 30, 2016, A144794) [nonpub. opn.].)

² To avoid confusion, we refer to Jeffrey by his first name and Karen as defendant.

committed by her husband (Pen. Code, § 32). It was further alleged that from October 1 through 31 and November 1 through 30, 2012, defendant committed two counts of misdemeanor receiving stolen property (*id.*, § 496, subd. (a)).

Defendant was tried before a jury and was found guilty on all three counts. The court suspended imposition of sentence and placed defendant on probation for three years with nine months in county jail. This timely appeal followed.

EVIDENCE AT TRIAL

Jeffrey's Arrest

Jeffrey was a longtime officer with the Santa Rosa Junior College (SRJC) Police Department, having worked there for over 25 years. His responsibilities included collecting money from the parking meters and permit machines on campus. The meters accepted coins, while the permit machines accepted coins and \$1 and \$5 bills. Each machine kept an account of how much money had been deposited in that machine, and a printout of that account was supposed to be delivered with the money to accounting. Jeffrey had a laptop that could access and delete that data.

SRJC Police Sergeant Steven Potter worked with Jeffrey from 2005 to 2012. He began to suspect Jeffrey was stealing money from the meters and permit machines after seeing him on campus on two separate occasions collecting money while he was off duty, driving his personal vehicle, and in plain clothes. Sergeant Potter recalled one particular occasion when he spotted a suspicious truck on campus around 5:00 a.m. When he approached the truck, he saw Jeffrey inside with bags of money. Jeffrey told Sergeant Potter he was getting ready to leave for a weeklong vacation in Las Vegas and he wanted to empty the machines before he left.

Later, in 2012, Sergeant Potter was in Jeffrey's personal truck and noticed the center console and cup holders were overflowing with coins. Having been in Jeffrey's patrol car over the years, he was aware the center tray in that car was likewise always full of quarters. At the end of that workday, Sergeant Potter reported his observations to his lieutenant. His suspicions were ultimately brought to the attention of the Santa Rosa Junior College Police Chief, who referred the matter to the Santa Rosa Police Department

for investigation. A two-week surveillance followed, culminating in Jeffrey's arrest on November 28, 2012.

Jeffrey's last day of employment with the SRJC Police Department was December 31, 2012. After he left, there was a significant increase in revenue from the parking meters and machines.

Santa Rosa Police Detective Mark Azzouni was involved in the surveillance of Jeffrey. Over the course of several weeks, he observed Jeffrey remove money from the meters and permit machines and take the money to his house. He acknowledged that during the surveillance, he never saw defendant on campus with Jeffrey, in the police car with him, or collecting the money with him. He also acknowledged that on one occasion, he saw Jeffrey approach the house with a bag, put it on the ground next to the gate to the backyard, and enter the house. Someone then retrieved the bag from inside the house. It appeared to the detective that Jeffrey was trying to avoid anyone in the house see him bring the bag inside. Detective Azzouni further acknowledged that he had not observed Jeffrey give defendant money to put into her account, and there was no evidence tracing the funds taken from SRJC to the funds defendant deposited in her account. He also never saw Jeffrey come from a parking meter and give defendant money that she then deposited.

The Search of the Holzworths' Home

Following Jeffrey's arrest, the police conducted a search of the Holzworths' home. In a dresser in the closet of the master bedroom, there was a small amount of currency, empty coin wrappers, items from the SRJC Police Department, and women's clothing items.

On top of a corner cabinet, there were four large jars containing \$1,216.42 in coins. Inside the cabinet, there were more coins, as well as magazines for a pistol, bullets, and a "sap."³

³ A "sap" was described as a law enforcement weapon similar to a nightstick.

In a nightstand to the left of the bed, there was a personal diary belonging to defendant. There was also \$585 in paper currency and coins, as well as coin wrappers, SRJC police insignia patches, and other items.

In a dresser in front of the bed, there was \$561.50 in paper currency and coins, law enforcement printouts, SRJC patches, cards of female escorts, and other items.

A canvas bag under the bed contained \$1,400 in \$1 and \$5 bills. In the garage, there were canvas bags that contained almost \$5,000. There was also currency found in the attic.

All told, the money seized from the residence totaled \$10,212.82.

Bank Records

Defendant was a member of and frequent customer at the Redwood Credit Union. She had an individual account ending in 6761 to which only she had access, and she and Jeffrey had a joint account ending in 5007. Redwood Credit Union Member Services Representative Natalie Brandon testified that she was familiar with defendant, who often deposited small denomination bills and coins into both accounts. According to Brandon, deposits of that nature are typically seen with business accounts and are uncommon in personal accounts.

The prosecutor showed Brandon deposits slips reflecting the cash deposits made to the two Redwood Credit Union accounts from January 2005 to November 2012.⁴ Brandon testified at length about the transactions, describing a pattern in which defendant made frequent deposits to her individual account of small denomination bills (\$1 and \$5) and coins, and both she and Jeffrey made similar deposits to their joint account. The transactions sometimes involved cash exchanges, in which small denomination bills and coins were deposited and an equivalent amount of money in larger denomination bills was withdrawn. On occasion, the deposits involved larger denomination bills (\$20, \$50,

⁴ The accessory count charged the time period January 1, 2005 through November 24, 2012.

and \$100).⁵ By way of example, the deposit slips reflected the following deposits to defendant's individual account in August 2011: August 2: 100 \$1 bills; August 6: 100 \$1 bills; August 8: 200 \$1 bills, 40 \$5 bills, and 100 in "other";⁶ August 20: 150 \$1 bills and 40 \$5 bills; August 30: 101 \$1 bills and 20 \$5 bills. The cash deposits for that month totaled \$1,251, with \$651 of it in \$1 bills.

The months of October and November 2012—the months that were the subject of the receiving stolen property charges—are also illustrative. In October, defendant made the following cash deposits to and withdrawals from her individual account: October 1, deposited 75 \$1 bills; October 12, deposited 200 \$1 bills and withdrew \$200 in \$20 bills; October 13, deposited one \$100 bill, nine \$5 bills, 11 \$1 bills, and \$100 in "other"; October 16, deposited one \$100 bill, three \$20 bills, and one \$10 bill; October 17, deposited 250 \$1 bills and withdrew \$350; October 22, deposited 152 \$1 bills; October 24, deposited six \$20 bills and 101 \$1 bills; October 26, deposited six \$5 bills and 14 \$1 bills. The cash deposits for that month totaled \$1,568, with \$803 of it in \$1 bills.

There were also seven cash deposits to the joint account that month. Two deposits (October 19 and 20) were made by Jeffrey, as confirmed by his signature on the deposit receipts, and it could not be verified who made four of the deposits (October 4, 16, 27, and 29). A surveillance photograph confirmed that defendant was at the bank on the day of the seventh deposit, October 11, when she deposited 300 \$1 bills and three \$100 bills.

In November 2012, defendant made the following cash deposits to and withdrawals from her individual account: November 5, deposited three \$100 bills, one \$50 bill, and three \$20 bills; November 9, deposited 175 \$1 bills and withdrew \$50; November 16, deposited 25 \$20 bills; November 20, deposited 100 \$1 bills and 20 \$5

⁵ Brandon was able to verify that defendant made certain of the deposits by her signature on the deposit slip, which was required in transactions in which a withdrawal was also made. Security photographs on certain dates in 2011 and 2012 also confirmed that defendant was at the credit union when deposits of small denomination bills were made to either her individual account or the joint account.

⁶ "Other" denotes coin deposits or currency of an unusual denomination, such as a \$2 bill.

bills, and November 23, deposited 200 \$1 bills. Her cash deposits for that month totaled \$1,485, with \$475 of it in \$1 bills.

There were also five cash deposits to the joint account that month, three of which were made by Jeffrey (November 9, 21, and 26), one in which the depositor's identity could not be confirmed by either a signature or surveillance photograph (November 17), and one made by defendant on November 2, in which she deposited two \$100 bills.

Jeffrey also had an individual account at Community First Credit Union. There was a similar pattern of cash deposits and exchanges involving that account, although the transactions were less frequent and involved substantially less money than the cash deposits made at the Redwood Credit Union.

Detective Azzouni also testified concerning the 2005 to 2012 deposit records. He analyzed the records and prepared spreadsheets for both Redwood Credit Union accounts. The spreadsheets itemized every deposit from January 2005 through the date of Jeffrey's arrest in November 2012, identifying who (if known from a signed deposit slip) made the transaction, what denominations were deposited, and the amount of a withdrawal, if any. As to defendant's individual account, the spreadsheet confirmed that in the years 2005, 2006, and 2007, defendant generally made anywhere between no deposits to four deposits a month in denominations ranging from \$1 to \$100 bills, with infrequent deposits of a large number of \$1 bills. In 2008, however, the number of monthly deposits began to increase, with defendant making upwards of nine deposits in at least one month, and depositing large quantities of \$1 and \$5 bills, often multiple times a month.

Detective Azzouni's analysis showed that the following total cash deposits were made to defendant's individual account at the Redwood Credit Union: 2005—\$1,333; 2006—\$3,645; 2007—\$1,938; 2008—\$13,403.84; 2009—\$11,744.58; 2010—\$13,866; 2011—\$8,161; 2012—\$16,960. The following cash deposits were made to the joint account: 2005—\$7,102.50; 2006—\$9,277; 2007—\$18,885.06; 2008—\$20,039.85; 2009—\$29,816.14; 2010—\$35,984; 2011—\$37,294.52; 2012—\$34,192.

Ursuline High School Bingo Games

Donna Johnson testified that she had been involved with Ursuline High School bingo games for about 40 years. The games were held every Sunday and Tuesday evening. She managed the games from 2005 to when they ended in September or October 2012. Initially, employees received their wages in cash (typically \$40, although the employee running the desk received \$50), but by 2006, a payroll system was implemented, after which the only cash the employees received was in tips. On a good night, a caller might make \$50 in tips, and a runner might receive tips also. The other positions usually only received tips if there was a big payout for a special game.

Defendant worked at the bingo games, usually at the desk or in the kitchen, and sometimes as a caller or a runner. In staffing the desk, she was responsible for counting all the money that came in, setting it up for deposit, and replenishing the bank for the next game. That sometimes involved exchanging certain denominations for others. For example, if the bank had excessive \$5 bills and needed more \$20 bills, she would make that exchange; if there were too many \$20 bills, she would exchange those for \$1, \$5, or \$10 bills. A \$20 bill was the largest denomination kept in the game's bank, so exchanges were made for \$20 bills and smaller; there would be no reason to exchange smaller denominations for a \$100 bill. Players used mostly paper currency for the games, although some brought coins.

When asked if it would be unusual for someone to make \$3,200 a month in tips, Johnson answered, "That would [be] rare. I mean, that wouldn't happen." Someone might make \$400 per month in tips, but \$200 to \$300 for a good month would be more reasonable.

The Ursuline bingo games closed in September 2012 and a new game started a month later.

Jailhouse Telephone Calls

While Jeffrey was in jail following his arrest, he made four telephone calls to defendant. Recordings of the calls, which were played for the jury, contained the following passages:

Call no. 1:

“Defendant: Hey.

“Jeffrey: Hey.

“Defendant: What’s going on?

“Jeffrey: I’m in deep trouble, Karen.

“Defendant: What do you mean? What happened?

“Jeffrey: That money situation caught up to me.

“Defendant: And now what?

“Jeffrey: I’m in jail.

“Defendant: What?!

“Jeffrey: I’m in jail right now Just calm down

“Defendant: Are you fucking kidding me?

“Jeffrey: No, I’m not, Karen.

“Defendant: What happened?

“Jeffrey: Well, I guess they’ve been following me, and watching what I’ve been doing. . . .

“Defendant: So now what?

“Jeffrey: Well, I, I, well, when you get home I’ll call ya, but I’m trying to get bail now, and I’ve got Steve trying to get me bailed out of here. . . . and they’ve been to the house, so I’m not sure what the house looks like. They searched, they searched, the house. [¶] . . . [¶] I’ll call the house in a, in a little bit and then I’ll talk to you when you get to on the home phone . . . but it’s on me and I’m very sorry

“Defendant: So, we’re going to lose everything?

“Jeffrey: I need your support, though, babe. No, just I need your support.

“Defendant: I know, but we’re going to lose everything.

“Jeffrey: No, just—

“Defendant: [unintelligible]

“Jeffrey: —let’s not, let’s not panic yet, ok?

“Defendant: [unintelligible] you fucking [unintelligible] Not panic??

“Jeffrey: [unintelligible] I know, but I need to be calm right now, you’re driving.

“Defendant: Ok, ok.

“Jeffrey: Ok. I’m trying, I know, I, I, just be calm for a, ok? And get home, ok?
So, I’ll call you. . . .”

Call no. 2:

“Defendant: Ok. . . . So the police just called me and want me to go down to the station, Jeff. I, get your keys and to talk to me. What the hell?!

“Jeffrey: Well, cause they want to know what you knew and stuff like that.

“Defendant: What are you being charged with?

“Jeffrey: Grand theft. [¶] . . . [¶] It’s about the money and stuff, they want your side of it, what you knew and, you know all that, you knew, but you told me not to, you know, you told me I should stop doing it, and I didn’t listen. . . . [¶] . . . [¶]

“Defendant: Am I going to get arrested?

“Jeffrey: I don’t (sighs), I don’t, I hope not!

“Defendant: What do you mean you hope not?!

“Jeffrey: Well, Karen, I don’t know what they are going to do. [¶] . . . [¶]

“Defendant: So do I go down there?

“Jeffrey: Yeah, cause you need to get my keys. And find out where my truck’s at.

“Defendant: The truck’s at the J.C.

“Jeffrey: Oh, it’s still there? Okay, so I need to get Yeah, so you have to go down there, and just, you know say it’s all on me . . . which it is.

“Defendant: I know, but I knew about it so doesn’t that make it on me too?

“Jeffrey: Well (sighs), no, cause I did everything. . . . [¶] . . . [¶] Well, just go down there, and do what you gotta do. I’m sorry. We’ll talk when I get hopefully get out of here.

“Defendant: Yeah, but what if I go down there and they arrest me, too?

“Jeffrey: No! [¶] . . . [¶] Well, I don’t know what, they just wanna get your side of the story. What you, you know, about me and how I, you know. . . . and I just said, I

was just, it snow balled because financially we, I was just . . . trying to keep us afloat. And I was just, it was second nature, you know, the last four or five years.”

Call no. 3

“Defendant: There are four pages of things they took.

“Jeffrey: Such as? [¶] . . . [¶]

“Defendant: They took everything, Jeff.

“Jeffrey: What do you mean everything?

“Defendant: Oh my god! There’s four pages of things here that they took!

Wherever you had things stashed they ripped through our whole house.

“Jeffrey: Ok.

“Defendant: They took everything out of the fucking spare bedroom. They took like deed to my car, they took, you had all the coin things, they took everything you had. They went up into the attic, they went into the garage. They, they took, just on and on and on.

“Jeffrey: Ok. (Sighs.) Ok.

“Defendant: Well, am I gonna get arrested?

“Jeffrey: I don’t know, Karen, I don’t know.

“Defendant: Oh my god, I can’t handle you saying I don’t know.

“Jeffrey: Well, because I . . . it’s all on me.

“Defendant: How’s it all on you?! Not the time to talk about it.

“Jeffrey: I know.

“Defendant: We’ll talk about it when you get home.”

Call no. 4

“Jeffrey: Well, I’ve again, I’ve tried the house phone, but is it not working?

“Defendant: Jeff, they took the router for the computer. We have no T.V., no phone, no nothing.

“Jeffrey: Wow. (Sighs.) Ok then, I did not know that, I did not know that.

[¶] . . . [¶]

“Defendant: So that’s why, I’m not getting [unintelligible] because they took. They’re looking to see if you have a paper trail. Or money somewhere—

“Jeffrey: No, I . . .

“Defendant: —hidden.

“Jeffrey: Yeah.

“Defendant: Do you have any hidden that I don’t know about?

“Jeffrey: No!

“Defendant: Besides all the fucking bags that they took?

“Jeffrey: No. . . . Nope.

“Defendant: You have no separate account no nothing?

“Jeffrey: No. . . . Nope.”

The Defense

Defendant testified in her own defense. She and Jeffrey married in 1992, and Jeffrey was already employed by the SRJC Police Department at that time. They opened their joint account when they got married, and defendant opened her individual account in 2001.

Defendant had held various day jobs over the years and also worked at the Ursuline High School bingo games on Tuesday and Sunday nights from 1982 to 2013. She worked a variety of positions at the games, eventually becoming a caller. The amount of tips she received as a caller varied, depending on the games and the crowd. According to defendant, between 2005 and when the game ended, it would not be unusual to make between \$100 and \$200 in cash on a given night, usually in \$1 and \$5 bills. She kept that cash in a jar in the back of her closet and would occasionally deposit it to cover a bill.

Defendant and Jeffrey had problems in their relationship from the start. The problems got so bad that in 2008, defendant moved out of the family home. When she moved out, she started going to the River Rock Casino to get away and gamble. When she won, she was paid in \$100 and \$20 bills. She moved back home a few months later because she started to become the weekend parent and she wanted to be there for her

daughter. Her relationship with Jeffrey did not improve when she returned home, but she stayed for her daughter's sake. After she returned home, she did not always stay in the master bedroom because she and Jeffrey did not have an intimate relationship. Instead, some nights she slept on the couch or in the spare bedroom.

Over the years, all three of defendant's brothers had borrowed money from her, with Michael borrowing about \$20,000. He started repaying her by check, writing a year's worth of checks at once but later telling her not to cash a particular check because he could not cover it. He then started repaying her in cash. She either used the money right away or put it in her jar for later deposit into her separate account.

Defendant denied Jeffrey ever gave her money and told her to deposit it in her individual account. When defendant deposited cash into her separate account, it came from her bingo tips, River Rock Casino winnings, and repayments from her brothers. On occasion, defendant would deposit to their joint account money Jeffrey had given her, but she never questioned where the money came from. She was aware in 2009 he was depositing money in their joint account, but she did not ask where the money was coming from.

In July 2012, defendant found a canvas bag of money in the bedroom and confronted Jeffrey about whether he was stealing money. He told her it was not what she thought, "that it was his work, that he didn't want to leave it in the truck overnight, that he was taking it back the next day." She accepted what he told her because she "never, never doubted anything that he did when it came to his job."

Defendant remembered making cash deposits to the joint account in October 2012. Looking at the deposit slips, she believed she withdrew \$600 or \$700 from that account over the course of the month to gamble with at the River Rock Casino. The day after gambling, she would deposit her winnings. From the deposit slips, she believed she deposited about \$700 to \$800 in winnings that month. That same month, she deposited money in her individual account. Again, the money would have come from bingo tips, River Rock winnings, and her brothers. Defendant denied that any of the October 2012 cash deposits to her individual account came from Jeffrey.

Defendant did not recall making any cash deposits to the joint account in November 2012 and denied that Jeffrey gave her any cash to deposit to that account that month. She did deposit close to \$1,300 in her individual account that month, again testifying that the cash would have come from bingo tips, River Rock winnings, and anything her brothers repaid her.

Defendant agreed that the bank records showed that in 2010, she deposited \$13,866 in cash to her personal account and withdrew \$2,545, in 2011, she deposited about \$8,161 in cash to her personal account and withdrew \$1,650, and in 2012, she deposited almost \$17,000 to her personal account. She denied any of that money came from Jeffrey, but she could not explain the significant increase in deposits into her individual accounts over the years, other than to attribute it to gambling, bingo tips, and repayments from her brothers.

In 2012, there was \$33,400 deposited to their joint account, with over \$5,000 in August alone. Defendant claimed she did not notice the \$33,400, and was unaware Jeffrey was depositing large amounts of cash into their joint account. She claimed she never examined their bank statements to see what deposits were being made because they lived month to month.

Defendant was asked about the recordings of the jail telephone calls between her and Jeffrey. She testified that when he told her “that money thing caught up to me,” she did not know what he meant. Asked why in the second call she expressed concern about being arrested, defendant answered, “Well, when I got to the house and after everything I saw and talking to my daughter, they took things that were mine. They questioned her about me. I mean, I’m married to him. My whole—why wouldn’t I think that.”

As to why she asked Jeffrey about hiding things in the house, defendant testified that during that conversation, she had in front of her the inventory of items taken during the police search of the house and that was what she was talking about. She claimed that before seeing the list, she did not know he was hiding things.

When asked what she meant when she asked Jeffrey if he had hidden any money she did not know about, she testified, “Well, I knew my bank account. I knew what we

had. I had no idea that what he has was—where it was. What more. I mean, my state of mind was—you know, out in la land. And, you know, looking at what they said he took, I had no idea where he could have been keeping it, where he had it. Because I knew it wasn't in my—with me.” Asked again on cross-examination about her questions to him about whether he had “any [money] hidden that [she didn't] know about” besides the bags that were seized and whether he had a separate account, she answered, “I had the list of that. We had a bank account together. He had his own account. And I had my own account.”

Asked what she meant when she said she knew so didn't that make it on her, too, defendant attempted to explain, “That whole day, that whole conversation, was right after a lot of phone calls, phone calls from a lot of people, talking to my daughter, trying to get her settled, calmed down. Listening to what the police said to her, I was mad, angry. I could have said almost anything.” Defendant then offered that she found a bag of money in July and became suspicious.

Turning to the layout of the master bedroom, defendant said the long dresser across from the bed belonged to Jeffrey. There were two nightstands, one belonging to Jeffrey and one to her. Jeffrey stored materials in the cabinet under the television. She used the dresser in the walk-in closet. She claimed she never looked in the drawers in Jeffrey's dresser.

The jars in the bedroom were where they put loose change, which they had been doing for as long as she remembered. Occasionally, she would roll it up and put it in the bank. Defendant kept cash in a drawer in the bedroom closet, but it had not come from Jeffrey.

Defendant never checked under the bed because she did not make the bed very often. She had never been in the attic because she did not like going up the ladder, and she did not know Jeffrey was storing bags of money up there. She also never looked inside the drawers of the workbench or the cabinets in the garage.

Defendant denied knowing that Jeffrey took money from the SRJC parking machines and meters. And she denied she had knowingly deposited stolen money into her accounts to hide that money.

Defendant also called two of her brothers to testify. Michael Chole, defendant's younger brother, lived with defendant at the time of trial, and had also lived with her from April to September 2009, during which time he saw signs of marital difficulties. He never saw large amounts of cash lying around the house, although he knew there was a big jar full of coins in their bedroom.

Between 2001 and 2012, Michael had borrowed an estimated \$20,000 from defendant. He repaid her over the years. When he repaid her, it was in cash, which he typically left on the kitchen counter.

Richard Chole was one of defendant's older brothers. In late 2008 through 2009, he was a runner at the Ursuline High School bingo games. He estimated that a runner might make \$20 to \$25 in tips a night if the winning bingo players liked the runner and had known him or her for a long time. He knew that defendant received tips for calling.

Richard had been to defendant's house between 2005 to 2012. He never noticed large amounts of money lying around, but he also never spent time in their bedroom, attic, or garage crawl space.

Lastly, defendant introduced character evidence from three witnesses. Trevor Thurston had known defendant since the late 1990s, when they did business together. He could always talk to her about his personal and work lives and she would keep things confidential. He believed defendant was very truthful and honest, and as an employee, she admitted if she made a mistake.

Ingridt Linde had been friends with defendant for about 30 years, and she felt like they were sisters. They also had business connections, and defendant was always professional and friendly. Based on observing defendant's interactions with people, Linde believed she was truthful, understanding, giving, and law abiding. Linde had been to defendant's house many times and was aware there were jars of coins around the house. She otherwise never noticed money lying around.

Mary Pennington had known defendant since 1986, when she interviewed defendant for a job. On two occasions—once in 2009 and again six months before the trial—Pennington had helped defendant get a job. She believed defendant was the most truthful person she knew, “the moral compass of the community and friends” they shared. Defendant also had a “very high” reputation for honesty in their community.

DISCUSSION

The Jury’s Finding that Defendant Was Guilty of Being an Accessory to Jeffrey’s Grand Theft by Embezzlement Is Supported by Substantial Evidence

In her first argument, defendant contends there was insufficient evidence to support her conviction for accessory to grand theft by embezzlement. To review defendant’s claim of insufficient evidence, our task “ ‘is to review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ ” (*People v. Story* (2009) 45 Cal.4th 1282, 1296; accord, *People v. Carter* (2005) 36 Cal.4th 1114, 1156; *People v. Young* (2005) 34 Cal.4th 1149, 1180–1181; *People v. Snow* (2003) 30 Cal.4th 43, 66; *People v. Johnson* (1980) 26 Cal.3d 557, 576.) This standard applies to cases involving both direct and circumstantial evidence. (*People v. Kelly* (2007) 42 Cal.4th 763, 787–788.)

The crime of accessory to commission of a felony—the felony in this case being grand theft—is set forth in Penal Code section 32, which provides: “Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.” The offense consists of the following elements: “(1) someone other than the accused, that is, a principal, must have committed a specific, completed felony; (2) the accused must have harbored, concealed, or aided the principal; (3) with knowledge that the principal

committed the felony or has been charged or convicted of the felony; and (4) with the intent that the principal avoid or escape from arrest, trial, conviction, or punishment.” (*People v. Plengsangtip* (2007) 148 Cal.App.4th 825, 836.) Put another way, “A conviction under section 32 requires proof that a principal committed a specified felony, the defendant knew that the principal had committed a felony, the defendant did something to help the principal get away with the crime, and that as a result of this action the defendant intended to help the principal get away with the crime.” (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 536.)

Defendant does not challenge the sufficiency of the evidence that Jeffrey committed a felony. And she “does not dispute that at some point she knew that her husband had stolen parking money from Santa Rosa Junior College,” conceding that “[t]here is admittedly evidence from the recorded jailhouse phone calls . . . that could be interpreted in that manner.” This concession is well taken in light of the many passages in the telephone calls evidencing defendant’s knowledge of her husband’s theft, from her failure to inquire what he meant by “that money situation caught up to me,” to her query that since she knew about it didn’t that make it on her too, to her question about whether Jeffrey had any money hidden other than what she already knew about. Instead, defendant argues that “the People failed to supply any adequate evidence that [defendant] ever deposited or exchanged stolen money she received from her husband or that she ever intended to help her husband get away with the theft of parking funds from the junior college by taking cash to the credit union and depositing it or exchanging it for different currency.” We conclude to the contrary, that there was abundant evidence defendant knowingly deposited or exchanged money Jeffrey stole from SRJC with the intent to help him get away with his embezzlement scheme.

The primary evidence against defendant came from the extensive bank records of her individual account and the couple’s joint account at Redwood Community Credit Union. We need not repeat the exhaustive details here, but the evidence showed that between 2005 and 2012 defendant deposited into both accounts tens of thousands of

dollars in small denomination bills and coins, precisely what defendant stole from the parking meters and permit machines.

Defendant's only explanation for where this cash came from was bingo tips, River Rock Casino winnings, and loan repayments from her brothers. As to the bingo tips, while defendant claimed she made upwards of \$200 a night in bingo tips (which would add up to \$1,600 a month), both Donna Johnson and defendant's brother Richard testified that bingo tips were realistically in the range of \$20 to \$25 a night, or \$200 to \$300 a month. And notably, in October and November 2012, defendant made cash deposits into her individual account of \$1,568 and \$1,485, respectively, but the Ursuline bingo games had ceased by that point. Defendant's claimed River Rock Casino winnings did not account for the deposits, as she testified she received her gambling winnings in \$20 and \$100 bills, while her suspicious deposits were \$1 and \$5 bills. Finally, while both defendant and her brother Michael testified that he repaid her in cash when he had the money, there was no testimony that he regularly paid her in hundreds of \$1 and \$5 bills. And it is unlikely he was repaying his \$20,000 debt in \$1 and \$5 bills. In short, defendant offered no credible testimony about how she came into possession of so much cash in small bills.

The duration of the suspicious deposits also supports the verdict. Defendant's deposit history in 2005, 2006, and 2007 was fairly unremarkable. In 2008, however, the deposits to both credit union accounts increased, and they maintained a generally upward trajectory until defendant's arrest in November 2012. Defendant was thus making suspicious deposits for nearly five years. This was consistent with Jeffrey's statement during one of the jail telephone calls that the embezzlement was "second nature" over the last four or five years.

Additionally, the evidence showed that despite defendant's protestations of a troubled marriage to Jeffrey, their lives remained very intertwined. They shared a daughter together, they lived under the same roof, they maintained merged finances as evidenced by their joint account, and they ran errands together, including to the credit

union to make deposits. They also shared a bedroom, where thousands of dollars were found, as evidenced by the fact that both of their belongings were found in that room.

There was also evidence of defendant's culpability in the jail telephone calls. She expressed concern that she was going to be arrested, which the jury could have construed as an acknowledgment of her guilt. She also seemingly admitted her involvement in the scheme when she asked Jeffrey, "How's it all on you?" after he attempted to console her that it was all on him.

All of the foregoing was evidence from which the jury could have deduced that defendant was an active and knowing participant in Jeffrey's scheme to steal coins and small denomination bills from the parking meters and permit machines and to conceal those funds by depositing them in their credit union accounts or making cash exchanges for larger—and less suspicious—denominations.

Defendant's response to all the evidence against her can be synthesized into essentially one objection: there was no *direct* evidence that she ever deposited stolen money or of her intent to aid Jeffrey in his embezzlement scheme. For example, she says this about Detective Azzouni's testimony: "Santa Rosa Police Detective Azzouni admitted on cross-examination that he had *no evidence* that allowed him to determine if and when Jeff Holzworth gave [defendant] parking receipt money taken from Santa Rosa Junior College. This included October and November 2012. He then acknowledged that he could *not* trace any legitimate or illegitimate source of the cash amounts that [defendant] deposited into her husband's account or her personal account at any time, including in the early time period of 2005 and 2006. In other words, there was no evidence known to the investigating officer that could establish that any of the cash deposited by [defendant] into any of the subject bank accounts came from money stolen by Jeff Holzworth from the junior college." Her argument overlooks one critical—and dispositive—fact: while there was no *direct* evidence Jeffrey gave stolen money to defendant and that she intended to help him get away with his embezzlement schedule, there was more than enough *circumstantial* evidence. And it is indisputable that a conviction of a criminal offense may be based on circumstantial evidence. (*People v.*

Stanley (1995) 10 Cal.4th 764, 792–793 [“ ‘ “Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt.” ’ ”]; *People v. Bynum* (1971) 4 Cal.3d 589, 599, overruled on another ground in *People v. Williams* (1976) 16 Cal.3d 663, 669 [“The People may rely on circumstantial evidence to connect the defendant with the commission of the crime charged and to establish beyond a reasonable doubt that he committed it.”].) Indeed, intent is often proved by circumstantial evidence. (See, e.g., *People v. Johnson* (1993) 6 Cal.4th 1, 36, overruled on another ground in *People v. Rogers* (2006) 39 Cal.4th 826, 879.)

We close our consideration of defendant’s challenge to her felony conviction with an observation about “arguments” she asserts in her reply brief, much of which she dedicates to attempting to persuade us that the prosecutor’s closing argument—quoted at length in the respondent’s brief—actually demonstrates the lack of evidence of her guilt. This is so, she contends, because the prosecutor essentially argued that the evidence of defendant’s knowledge and intent was that she was married to Jeffrey, they lived together and occasionally ran errands together, and they had a daughter together. She then responds the prosecutor’s closing argument—which she labels the “lamest of all assertions”—with this banality: “Really? No, really? This is the kind of evidence which supports the multiple convictions in this case?” Elsewhere in the brief, defendant repeats her “Really? No, really?” query, and also advances these unbecoming responses to other arguments the prosecutor made: “Excuse us, but what is this nonsense?” and “Huh? What?” While these colloquialisms may be suitable for a tweet or a Facebook status update, they detract from the substance of defendant’s arguments—not to mention that they have no place in an appellate brief.

The Jury’s Finding that Defendant Was Guilty of Two Counts of Misdemeanor Receiving Stolen Property Is Supported by Substantial Evidence

Defendant’s challenge to her convictions for receiving stolen property fares no better.

The offense of receiving stolen property consists of the following elements: (1) particular property was stolen; (2) defendant received, concealed, or withheld that property from the owner; and (3) defendant knew the property was stolen. (*People v. Stuart* (1969) 272 Cal.App.2d 653, 656; *People v. Siegfried* (1967) 249 Cal.App.2d 489, 493; see also Pen. Code, § 496, subd. (a).) Per CALCRIM No. 1750, on which the court instructed the jury: “To prove that the defendant is guilty of this crime, the People must prove that: 1. The defendant aided in concealing or withholding property that had been stolen; AND 2. When the defendant aided in concealing or withholding the property, she knew that the property had been stolen.”

The evidence outlined above that supported defendant’s accessory to grand theft conviction also supported the verdicts on the receiving stolen property counts, which could also be proven by circumstantial evidence. (See *People v. Boinus* (1957) 153 Cal.App.2d 618, 621–622 [“It is not necessary that the defendant be told directly that the property was stolen. [Citation.] Knowledge may be circumstantial and deductive. [Citations.]”].)

Additionally, there was specific evidence concerning defendant’s suspicious deposits to the credit union accounts in October and November 2012, the time periods alleged in the receiving stolen property counts. In October, she deposited \$1,568 to her individual account, with \$803 of it in \$1 bills and \$100 in “other” (likely coins), and at least 300 \$1 bills to the joint account. In November, defendant deposited \$1,485 to her individual account, with \$475 of it in \$1 bills and \$100 of it in \$5 bills. These small denomination bills were identical to what Jeffrey was stealing from SRJC, yet defendant offered no credible explanation of how she came by that money. From this, the jury could have inferred that defendant received money from Jeffrey knowing it was stolen. (*People v. Schroeder* (1968) 264 Cal.App.2d 217, 225 [“ ‘Possession of stolen property, accompanied by an unsatisfactory explanation of the possession or by suspicious circumstances, will justify an inference that the property was received with knowledge it had been stolen.’ ”]; accord, *People v. McFarland* (1962) 58 Cal.2d 748, 754–755; *People v. Peters* (1982) 128 Cal.App.3d 75, 82.)

DISPOSITION

The judgment of conviction is affirmed.

Richman, Acting P.J.

We concur:

Stewart, J.

Miller, J.